

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of a
Decision of the
Universal Service Administrator by
Hemet Unified School District
Hemet, CA
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-295589
CC Docket No. 02-6

ORDER

Adopted: October 20, 2009

Released: October 20, 2009

By the Acting Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant a request for review of a decision by the Universal Service Administrative Company (USAC) denying funding for funding year 2002 to the Hemet Unified School District (Hemet) under the schools and libraries universal service support mechanism, also known as the E-rate program. For the reasons discussed below, we grant the Request for Review and remand the underlying application to USAC for processing consistent with this order. To ensure that the underlying application is resolved expeditiously, we direct USAC to complete its review of the application and issue an award or denial based upon a complete review and analysis no later than 90 calendar days from the release date of this order.

II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections. In general, the applicant must use the funded services within the funding year,

1 Letter from Richard Beck, Hemet Unified School District, and Robert Rivera, Spectrum Communications, to the Federal Communications Commission, CC Docket No. 02-6 (dated July 9, 2008) (Request for Review). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

2 We estimate that the appeal granted in this order involves an application for approximately \$547,082 in funding. We note that USAC has already reserved sufficient funds to address outstanding appeals. See, e.g., Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2009 (July 31, 2009). Thus, we determine that the action we take today should have a minimal impact on the universal service fund as a whole.

3 47 C.F.R. §§ 54.501-54.503.

except that the Commission's rules give applicants three additional months (until September 30 following the close of the funding year) to install one-time services known as non-recurring services.⁴ An applicant may request an extension of this deadline if one of certain criteria is met.⁵ The qualifying criteria are: (1) the applicant's funding commitment decision letter is issued by USAC on or after March 1 of the funding year for which discounts are authorized; (2) the applicant receives a service provider change authorization or service substitution authorization from USAC on or after March 1 of the funding year for which discounts are authorized; (3) the applicant's service provider is unable to complete implementation for reasons beyond the service provider's control; or (4) the applicant's service provider is unwilling to complete installation because funding disbursements are delayed while USAC investigates the application for program compliance.⁶ A request for an extension must be submitted to USAC on or before the September 30 deadline.⁷

3. Hemet's deadline for implementation of services was September 30, 2007, and requests to extend this deadline needed to be filed prior to the deadline.⁸ On August 23, 2007, Hemet sent USAC a letter requesting an extension of the deadline for 25 Funding Request Numbers (FRNs) because of delays that were beyond its service provider's control.⁹ On November 8, 2007, after the deadline for filing requests for extensions, Hemet sent USAC another letter explaining that it had inadvertently omitted four FRNs from the August Request.¹⁰ USAC granted the extension for 25 FRNs, but denied the extension for the four FRNs that had been omitted from the August Request because the November Request for the four FRNs was filed after the September 30 deadline to file requests for extension.¹¹ USAC also denied the service provider's subsequent appeal, and Hemet then filed the instant Request for Review.¹²

III. DISCUSSION

4. Based on the facts and circumstances of this case, and consistent with the Commission's decision in the *Bishop Perry Order* and with the Wireline Competition Bureau's decision in the *Great*

⁴ 47 C.F.R. § 54.507(d). See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 13510, 13512, para. 7 (2001) (*Permanent Extension Order*).

⁵ 47 C.F.R. § 54.507(d); *Permanent Extension Order*, 16 FCC Rcd at 13513, para. 12.

⁶ 47 C.F.R. § 54.507(d); *Permanent Extension Order*, 16 FCC Rcd at 13513, para. 12.

⁷ See USAC website, Service Delivery Deadlines and Extension Requests, <http://www.universalservice.org/sl/applicants/step11/service-deadlines-extension-requests.aspx> (last visited Oct. 20, 2009); see also *Permanent Extension Order*, 16 FCC Rcd at 13514, para. 15.

⁸ *Id.* USAC approved the relevant services on appeal on November 3, 2006; therefore, Hemet's installation deadline was the following September 30th. See Letter from USAC to Richard Hartline, Hemet Unified School District (dated Nov. 3, 2006).

⁹ See Letter from Richard Beck, Hemet Unified School District, to Schools and Libraries Division, USAC (dated Aug. 23, 2007) (August Request).

¹⁰ See Letter from Richard Beck, Hemet Unified School District, to Lorraine Hunsinger, Schools and Libraries Division, USAC (dated Nov. 8, 2007) (November Request).

¹¹ See Request for Review at 2.

¹² See Request for Review; Letter from USAC to Robert Rivera, Spectrum Communications Cabling Services, Inc. (dated June 20, 2008) (Administrator Decision on Appeal).

Rivers Order, we grant Hemet's request for review and remand the underlying application to USAC for processing consistent with this order.¹³ To ensure that the underlying application is resolved expeditiously, we direct USAC to complete its review of the application and issue an award or denial based upon a complete review and analysis no later than 90 calendar days from the release of this order.¹⁴

5. First, we find that, similar to the facts in the *Great Rivers Order*, Hemet's request for an extension for the four omitted FRNs would have been granted on the merits if Hemet had timely filed its November Request. In the *Great Rivers Order*, the Bureau granted a waiver to Great Rivers Education Cooperative, an applicant who, like Hemet, met the qualifying criteria for an extension, but filed its extension request after the September 30 deadline.¹⁵ Hemet stated in its first request that the service provider had encountered circumstances beyond its control, and USAC granted an extension for that request.¹⁶ USAC only denied Hemet's second request for the four additional FRNs because the request was late-filed.¹⁷ Second, we find that Hemet's inadvertent omission of four FRNs from its original request was a ministerial or clerical error sufficiently similar to those in the *Bishop Perry Order* to warrant a waiver of USAC's procedural rules.¹⁸ In the *Bishop Perry Order*, the Commission granted waivers of Commission rules where applicants made minor ministerial or clerical errors.¹⁹ In this case, the record demonstrates that Hemet had 29 FRNs with the relevant service provider and that the first request inadvertently omitted four of those FRNs.²⁰ Like the applicants in the *Bishop Perry Order*, Hemet has demonstrated that rigid adherence to filing procedures in this instance does not further the purposes of section 254(h) of the Communications Act of 1934, as amended (the Act), or serve the public interest.²¹

6. We emphasize the limited nature of this decision. Although we grant the request for review addressed here, this order does not alter the obligation of participants in the E-rate program to comply with the Commission's rules.²² We continue to require E-rate applicants to submit complete, timely, and accurate information to USAC as part of the application review process. Applicants continue to be responsible for requesting deadline extensions on time and in the proper format.

¹³ See *Request for Waiver of the Decision of the Universal Service Administrator by Great Rivers Education Cooperative and I-K Electric Company*, CC Docket No. 02-6, Order, 21 FCC Rcd 14115 (Wireline Comp. Bur. 2006) (*Great Rivers Order*) (granting applicant waiver of the September 30 deadline to submit deadline extension requests); *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, et al., CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006) (*Bishop Perry Order*) (granting waivers where applicants made ministerial or clerical errors).

¹⁴ In performing a complete review and analysis of the underlying application, USAC shall either grant the underlying application before it, or, if denying the application, provide the applicant with all grounds for denial.

¹⁵ *Great Rivers Order*, 21 FCC Rcd at 14119, para. 9.

¹⁶ See August Request; Request for Review at 2.

¹⁷ See Administrator Decision on Appeal at 1.

¹⁸ See *Bishop Perry Order*, 21 FCC Rcd at 5319, para. 8.

¹⁹ *Id.*

²⁰ See August Request; November Request; Request for Review at 1.

²¹ See *Bishop Perry Order*, 21 FCC Rcd at 5323, para. 14. See 47 U.S.C. § 254(h).

²² 47 C.F.R. §§ 54.501-503.

7. In remanding this application to USAC, we make no finding as to the ultimate eligibility of the services or the petitioner's application.²³ We remind USAC of its obligation to independently determine whether the disbursement of universal service funds would be consistent with program requirements, Commission rules and orders, or applicable statutes and to decline to disburse funds where USAC has evidence that this standard has not been met. The direction we provide USAC will not lessen or preclude any application review procedures of USAC. Indeed, the Commission retains its commitment to detecting and deterring potential instances of waste, fraud, and abuse by ensuring that USAC continues to scrutinize applications and takes steps to educate applicants in a manner that fosters program participation. All existing E-rate program rules and requirements will continue to apply, including the existing forms and documentation, USAC's Program Integrity Assurance review procedures, and other processes designed to ensure applicants meet the applicable program requirements.

8. Finally, we are committed to guarding against waste, fraud, and abuse and ensuring that funds disbursed through the E-rate program are used for appropriate purposes. Although we grant the Request for Review addressed here, this action in no way affects the authority of the Commission or USAC to conduct audits and investigations to determine compliance with the E-rate program rules and requirements. Because audits or investigations may provide information showing that a beneficiary or service provider failed to comply with the statute or the Commission's rules, such proceedings can reveal instances in which universal service funds were disbursed improperly or in a manner inconsistent with the statute or the Commission's rules. To the extent the Commission finds that funds were not used properly, it will require USAC to recover such funds through its normal processes. We emphasize that the Commission retains the discretion to evaluate the uses of monies disbursed through the E-rate program and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred and that recovery is warranted. The Commission remains committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under the Commission's procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the request for review filed by Hemet Unified School District, Hemet, California, on July 23, 2008 IS GRANTED and REMANDED to USAC for further consideration in accordance with the terms of this order.

10. IT IS FURTHER ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that USAC SHALL COMPLETE its review of this application and ISSUE an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order.

²³ Additionally, nothing in this order is intended: (1) to authorize or require payment of any claim that previously may have been released by a service provider or applicant, including in a civil settlement or plea agreement with the United States; or (2) to authorize or require payment to any person or entity that has been debarred from participation in the E-rate program.

11. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Jennifer K. McKee
Acting Chief
Telecommunications Access Policy Division
Wireline Competition Bureau